

## **REMARKS**

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

### **PTO/SB/08 Form**

The PTO 1449 Form submitted with the Information Disclosure Statement filed April 1, 2005, incorrectly listed item AI as “JP 02/087588” rather than “WO 02/087588”. In order to ensure that the reference is correctly listed on the face of a patent resulting from the present application, Applicants enclose herewith a PTO/SB/08 Form correctly listing this reference. Applicants kindly request that the Examiner initial the form and forward the initialed-copy to Applicants’ representative with the next correspondence.

### **Claim Amendments**

Claims 20-26, 31 and 35-38 have been cancelled, without prejudice or disclaimer.

New Claim 41 has been added to the application, and corresponds to a pharmaceutical composition containing 0.1 to 5 mg of the sucrose fatty acid ester on the basis of an amount equivalent to 100 mg efficacy of cefditoren pivoxil. Basis for the amendment can be found on page 7, lines 9-11 of the substitute specification, filed March 17, 2009, as well as pending claim 39.

### **Patentability Arguments**

The patentability of the present invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

### **Rejections Under 35 U.S.C. § 103(a)**

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohta et al. (W002/087588) in view of Nakamura (Foods and Food Ingredients Journal of Japan, 1999, Vol. 180, page 1).

Claims 20-26 and 31-40 are also rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohta et al. (WO 02/087588) in view of Nakamura (Foods and Food Ingredients Journal of Japan, 1999, Vol. 180, page 1), as applied to claims 1-19, and in further view of Hoffmann et al. (U.S. 2002/0015730).

These rejections are respectfully traversed for the following reasons.

Initially, the Examiner has incorrectly indicated that the publication date of Ohta et al., i.e., WO 2002/087588, is July 11, 2002. Applicants respectfully note that the correct publication date of WO 2002/087588 is November 7, 2002.

Secondly, the Examiner has incorrectly identified the Ohta et al. reference and the Nakamura reference. Specifically, the Ohta et al. reference is WO02/087588 (or U.S. 2004/0115272 A1), not WO00/06126. Further, the Nakamura reference is Foods and Food Ingredients Journal of Japan, 1999, Vol. 180, page 1, not U.S. 2002/0015730 A1.

Thirdly, Applicants submit herewith a verified English translation of the priority application, in order to obtain the benefit of the priority application. Since the priority date of the present application (October 2, 2002) is earlier than the publication date of the Ohta et al. reference (November 7, 2002) (WO 2002/087588), this reference is not available as prior art against the present application. Accordingly, both of the above-mentioned rejections should be withdrawn.

#### **Discussion Regarding Priority Application**

Applicants note that the priority application includes all of the working examples disclosed in the present application. Also, Applicants assert that the claim wording “maintains its particle state” in claim 1 is supported by the priority document. Specifically, the priority application clearly discloses that ingredients can be simply mixed to obtain the pharmaceutical composition according to the present invention. It is apparent that the active ingredient, amorphous cefditoren pivoxil, maintains its particle state. For example, please refer to the following description in the priority application.

[0025]

*The solid composition according to the present invention comprises a mixture obtained by physically mixing individual components. The “physical mixture” as mentioned in this specification means a mixture obtained by simply mixing*

*individual components, and is distinguished from a mixture obtained by temporarily dissolving individual components in a solvent followed by the removal of the solvent. At the time of mixing, the individual components in a form of power may be mixed or the individual components in a solid state can be crushed in the process of mixing.*

**Conclusion**

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

If, after reviewing this Amendment, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

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/Amy E. Schmid/

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Enclosures     PTO/SB/08 Form  
English translation of priority document JP 2002-290367